

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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S.C.M.,

Petitioner,

v.

OPINION and ORDER

KLINT TREVINO,

24-cv-611-jdp

Respondent.

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S.C.M.,<sup>1</sup> proceeding without counsel, is incarcerated at Oshkosh Correctional Institution. He seeks a writ of habeas corpus under 28 U.S.C. § 2254, challenging a 2004 Trempealeau County Circuit Court order placing him in the state's serious juvenile offender program.

The petition is before the court for preliminary review under Rule 4 of the Rules Governing Section 2254 Cases. Rule 4 requires the court to examine the petition and supporting exhibits and dismiss a petition if it "plainly appears" that petitioner is not entitled to relief. *See also* 28 U.S.C. § 2243 (habeas court must award writ or order respondent to show cause why writ should not be granted, unless application makes it clear that petitioner is not entitled to relief). I will deny the petition because this court cannot consider the validity of a sentence that has expired.

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<sup>1</sup> Although S.C.M. is now an adult, he identifies himself by his initials because he seeks to challenge a decision in a juvenile-court case that is sealed from the public. I will refer to him by his initials in this opinion.

## ANALYSIS

S.C.M. is currently incarcerated at Oshkosh Correctional Institution for convictions in Marathon County Circuit Court for child enticement and use of a computer to facilitate a child sex crime. *See* Marathon County Case No. 2013CF815. But S.C.M. is not challenging his current incarceration. Instead, he challenges a 2004 order placing him in the state’s serious juvenile offender program.

This court cannot vacate the 2004 juvenile-court order. Congress has authorized federal courts to entertain petitions for a writ of habeas corpus only when the individual seeking the writ is “in custody.” 28 U.S.C. §§ 2241(c) and 2254(a). From Wisconsin state-court records and S.C.M.’s similar previous habeas petition in this court, I am aware that he is no longer serving a juvenile-court sentence. *See S.C.M. v. Trevino*, No. 23-cv-558-jdp, 2023 WL 7353215, (W.D. Wis. Oct. 17, 2023).

The United States Supreme Court has held that a petitioner is not “in custody” for purposes of federal habeas corpus review once the challenged sentence has fully expired. *Maleng v. Cook*, 490 U.S. 488, 492 (1989). S.C.M. states that his “adult sentence in 2015 was exacerbated by this irregular juvenile matter.” Dkt. 1, at 4. But a prisoner cannot challenge a current sentence on the ground that it was enhanced based on a previous sentence that has expired. *Lackawanna Cnty. Dist. Att’y v. Coss*, 532 U.S. 394, 396–97 (2001). The only explicit exception to this rule is when a defendant was not appointed counsel under *Gideon v. Wainwright*, 372 U.S. 335 (1963), in the original criminal case. *Id.* at 404. Nothing in S.C.M.’s habeas petition suggests that this exception should apply. Therefore I must dismiss his habeas petition.

Under Rule 11 of the Rules Governing Section 2254 Cases, the court must issue or deny a certificate of appealability when entering a final order adverse to a petitioner. To obtain a certificate of appealability, the applicant must make a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2); *Tennard v. Dretke*, 542 U.S. 274, 282 (2004). This means that “reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.” *Miller El v. Cockrell*, 537 U.S. 322, 336 (2003) (internal quotations and citations omitted). Because I find that no reasonable jurist would debate the outcome here, I will not issue S.C.M. a certificate of appealability. He may seek a certificate from the court of appeals under Federal Rule of Appellate Procedure 22.

#### ORDER

IT IS ORDERED that:

1. Petitioner S.C.M.’s petition for a writ of habeas corpus under 28 U.S.C. § 2254 is DISMISSED.
2. Petitioner is DENIED a certificate of appealability. He may seek a certificate from the court of appeals under Federal Rule of Appellate Procedure 22.

Entered November 21, 2024.

BY THE COURT:

/s/

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JAMES D. PETERSON  
District Judge